BEFORE THE

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH

APPEALS BOARD

In the Matter of the Appeal of: ORANGE COUNTY FIRE AUTHORITY 1 Fire Authority Road Irvine, CA 92602 Employer	Docket 10-R3D1-3667 **DECISION AFTER RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petitions for reconsideration filed by the Orange County Fire Authority (OCFA) and the Division of Occupational Safety and Health (Division) under submission, renders the following decision after reconsideration.

JURISDICTION

On the morning of November 8, 2010, some of OCFA's personnel responded to a request for medical assistance in Irvine, California. OCFA's personnel rendered assistance to an employee of Pinnacle Exhibits at its place of employment. The subject employee had arrived at work feeling ill. OCFA's personnel provided first aid and transported the stricken employee to a local hospital where he was pronounced dead as a result of a myocardial infarction.

Neither decedent's employer nor OCFA reported the illness and death to the Division. After learning of the death from the County Coroner, the Division issued a citation to OCFA for an alleged violation of section 342(b) [first responders required to report injuries and illnesses to Division].[1]

OCFA filed a timely appeal of the citation.

Administrative proceedings were held, including submission of stipulated facts and briefs to an Administrative Law Judge (ALJ) of the Board. After considering the stipulated evidence and arguments of counsel, the ALJ issued an Order on October 14, 2011. The Order found OCFA in violation of section 342(b) but dismissed the citation and proposed penalty on the grounds that

[1] Unless otherwise specified, all references are to California Code of Regulations, Title 8.

Labor Code section 6409.2 and section 342(b) do not authorize imposition of a penalty.

OCFA and the Division each timely filed a petition for reconsideration. Employer sought reconsideration of the ALJ's determination that it had violated section 342(b). The Division sought reconsideration of the ALJ's dismissal of the citation and attendant penalty.

The Board took the petitions under submission by Orders of December 29, 2011 (OCFA), and January 6, 2012 (Division).

ISSUES

Did OCFA violate section 342(b)?

May a penalty be assessed if OCFA violated section 342(b)?

EVIDENCE

The parties stipulated as to the facts and they are not disputed. Briefly summarized, OCFA personnel responded to a request for emergency assistance a place of employment, rendered such emergency medical assistance as they could to an employee of that establishment, transported the victim to a local hospital and were aware that the victim expired despite their efforts. OCFA did not report the death to the Division.

DECISION AFTER RECONSIDERATION

In making this decision, the Board relies upon its independent review of the entire record in the proceeding. The Board has taken no new evidence. The Board has reviewed and considered the briefs and arguments of the parties made to the ALJ and in their respective petitions for reconsideration.

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

(a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
(b) That the order or decision was procured by fraud.
(c) That the evidence does not justify the findings of fact.
(d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
(e) That the findings of fact do not support the order or decision.

Grounds satisfying Labor Code section 6617's requirements were stated in both petitions.

This proceeding presents two legal questions. First we examine whether section 342(b) requires OCFA to report incidents such as the one involved here. Then we will determine whether a penalty may be assessed if OCFA was in violation of that regulation.

I. Section 342(b) Requires Employer to Report

Section 342(b) provides:

> Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury, or illness, or death occurs, the nearest office of the Division of Occupational Safety and Health shall be notified by telephone immediately by the responding agency.

The source and authority for section 342(b) is Labor Code section 6409.2, which similarly provides:

> Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury or illness, or death occurs, the responding agency shall immediately notify the nearest office of the Division of Occupational Safety and Health by telephone. Thereafter, the division shall immediately notify the appropriate prosecuting authority of the accident.

It is not disputed that OCFA is a "county fire agency," or that the deceased was "an employee covered by this part." (*Id.*)

The myocardial infarction which resulted in the victim's death was a "serious illness" as used in the quoted sections. The term "serious illness" is defined, by Labor Code section 6302(h) (in pertinent part) as "any . . . illness occurring in a place of employment or in connection with any employment[.]" Here, the significant language is "occurring in a place of employment[.]"[2] The victim's infarction occurred, or continued, at his place of employment. It was therefore an event OCFA was required to report, unless it did not qualify as an "accident" as the term is used in Labor Code section 6409.2 and section 342(b).

[2] Labor Code section 6303(a) defines "place of employment" as "any place, and the premises appurtenant thereto, where employment is carried on, except where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division [of Occupational Safety and Health]."

Neither the statute nor the regulation defines "accident." In such case the word is given its ordinary meaning and construed in context. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) The ALJ used the dictionary to determine the meaning of "accident." (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122 ["courts appropriately refer to the dictionary" to determine word's ordinary meaning].) She found that the victim's infarction was an accident, since it was "An event or condition occurring by chance or arising from unknown or remote causes[.]"[3] The illness which affected the victim here was such an "event or condition" happening by chance.

OCFA argues that a different definition should be used, claiming in essence that an accident is an event which causes a second event. Although we do not agree that OCFA's definition is appropriate, applying it would not advance OCFA's cause. If we applied that alternative definition here, the first such "event" was the victim's infarction, and the second and resulting event was his death. Thus, OCFA would have to report the "accident," as it defines the term, to the Division. We note further that both Labor Code section 6409.2 and section 342(b) explicitly require first responders such as OCFA to report "death[s]" occurring to employees.

Also, the context of the statutory reporting requirement is consistent with the definition of accident applied here. Labor Code section 6409.2 is the analog or complement of Labor Code section 6409.1(b), which requires employers themselves, in addition to first responders, to report serious illnesses, injuries or deaths involving their employees. The regulation stating this employer's reporting obligation is section 342(a). The statutes together establish a regime in which both employers and first responders are required to report such events to the Division. The legislative intent of this dual reporting requirement is to increase the probability that the Division will receive "immediate" notice of serious workplace illnesses, injuries, or deaths, and shows a strong policy interest in thus providing the Division the opportunity to investigate such events shortly after they occur. (See Labor Code sections 6313 and 6314 [investigations of places of employment by Division].)

It would defeat or frustrate that legislative intent to allow employers and/or first responders to preempt the Division's investigation by deciding that the illness, injury or death was not work-related and thus need not be reported. Employers would have a self-serving and entirely too human bias toward rationalizing a decision not to report in such circumstances. First responders, despite their greater objectivity and medical and technical knowledge, lack the Division's workplace safety expertise and its richer perspective and concomitant ability to detect patterns showing possible problems not detectable or appreciable from an *ad hoc* perspective. Finally, the definition of "serious injury or illness" in Labor Code section 6302(h) uses the

[3] Webster's Third New World Dictionary of the English Language Unabridged (1986) p. 11.

language "occurring in a place or employment or in connection with any employment[,]"convincing us that if, as here, a death occurs at a place of employment it must be reported, even if the cause of death is not work related, or at least not ostensibly so.

We therefore hold that OCFA was required to report this event to the Division by Labor Code section 6409.2 and section 342(b).

II. A Penalty May Be Assessed Against OCFA for the Violation

The California Occupational Safety and Health Act (Act), Labor Code section 6300 *et seq*. empowers the Division to assess a civil penalty against OCFA for violating section 342(b).

Labor Code section 6304 defines "employer" by reference to the definition of the term in Labor Code section 3300. Subdivision (b) of section 3300 includes with the definition, "Each county, city, district, and all public and quasi-public corporations and public agencies therein." OCFA is therefore an employer subject to the California Occupational Safety and Health Act (Act), Labor Code section 6300 *et seq*.

Labor Code section 6304.5 states in pertinent part that it is the legislative intent that the Act is "applicable to proceedings against employers for the exclusive purpose of maintaining and enforcing employee safety."

Labor Code section 6307 gives the Division "the power, jurisdiction and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment." In turn, Labor Code section 6308 provides the Division has specified powers to enforce the Act, including the power to "Require the performance of any other act [which employee safety] reasonably demands." (Lab. Code § 6308(c).) We hold that the Division has jurisdiction over OCFA and can cite it for an alleged violation.

Lastly, for present purposes, Labor Code section 6317 provides in pertinent part that "The Division may impose a civil penalty against an employer as specified in Chapter 4 (commencing with section 6423) of this part."

Within Chapter 4, Labor Code section 6427 provides that a violation which is "specifically determined not to be of a serious nature may be assessed a civil penalty of up to [$7,000]." Section 334(a) includes "regulatory violation[s]" within the class of violations which are not serious, specifically

defining them as including "failure to report industrial accidents[.]" Moreover, Labor Code section 6434.5 specifically provides that "[a]ny civil or administrative penalty assessed pursuant to this chapter [Chapter 4] against a public police or city, county or special district fire department . . . shall be deposited into" a specified fund, and that such an agency may later apply for a refund of such penalty with interest upon certain conditions.

To the extent OCFA bases its petition on the argument that it was not the *decedent's* employer, we hold that such argument is not well founded. First, Labor Code section 6409.2 requires a first responders such as OCFA which "is called to an accident involving an employee covered by [the Act]" to "notify" the Division. The statute does not limit that duty to such an agency's own employees. Second, as noted above, the Act includes OCFA within the scope of the term "employer," and contemplates that public agencies such as a fire department may be penalized for violating provisions of the Act or regulations promulgated under its authority. (See Labor Code §§ 6304, 6307, 6317, and 6434.5.)

In view of the foregoing, we conclude that OCFA may be assessed a civil penalty as was done in the citation and notice of penalty at issue.

We therefore affirm the ALJ's Order in part and reverse in part. We affirm that OCFA violated section 342(b) by failing to report the fatality to the Division. We reverse the Order insofar as it determined that OCFA was not obligated to pay a civil penalty, and further assess a civil penalty of $375 in docket number 10-R3D1-3667.

ART CARTER, Chairman
ED LOWRY, Board Member
JUDI S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: January 3, 2013